



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0964]

RIN 1625-AA00

Safety Zone; Oregon Inlet, Dare County, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is re-establishing and extending a temporary final rule that creates a temporary safety zone on the waters of Oregon in Dare County, NC. The duration of this safety zone is extended through June 15, 2018. This safety zone is needed to protect personnel, vessels, and the marine environment from the hazards associated with installing the navigation span and will restrict vessel traffic from the bridge's navigation span as it is under construction by preventing vessel traffic on a portion of Oregon Inlet. Entry of vessels or persons into this safety zone is prohibited.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until June 15, 2018. For the purposes of enforcement, actual notice will be used from May 4, 2018, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0964 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Matthew Tyson, Waterways Management Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone: (910) 772–2221, email: Matthew.I.Tyson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

II. Background Information and Regulatory History

On October 10, 2017, the North Carolina Department of Transportation notified the Coast Guard that they would be installing the navigation span of the new Herbert C. Bonner Bridge in Oregon Inlet, Dare County, North Carolina on January 29 through March 24, 2018, with alternate dates of March 25 through May 6, 2018. In response, following publication of an NPRM and solicitation of public comments, on January 1, 2018, the Coast Guard published a final rule establishing a temporary safety zone effective from January 29, 2018 through March 24, 2018, 83 FR 2910 with alternate dates of March 25, 2018 through May 6, 2018. Due to inclement weather and material delays the project has been delayed and the project completion date has been extended

through June 15, 2018. The COTP North Carolina has determined that potential safety hazards associated with the construction will be a concern for anyone transiting the Oregon Inlet navigation channel.

The Coast Guard is issuing this temporary rule to re-establish and extend the duration of the temporary safety zone without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because notification of the need to extend the safety zone was not given to the Coast Guard until April 26, 2018. It is impracticable and contrary to the public interest to publish an NPRM because we must extend the safety zone immediately through June 15, 2018, to protect personnel, vessels, and the marine environment on the navigable waters in Oregon Inlet during this construction phase.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to protect persons, vessels, and the marine environment on the navigable waters in Oregon Inlet during this construction phase.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The

COTP North Carolina has determined that potential safety hazards associated with the construction will be a concern for anyone transiting the Oregon Inlet navigation channel. The purpose of this rule is to protect persons, vessels, and the marine environment on the navigable waters in Oregon Inlet during this construction phase.

IV. Discussion of the Rule

This rule re-establishes and extends the effective dates of the rule, published in 83 FR 2910, by 40 days making it effective through June 15, 2018. Construction is expected to take place on 33 separate days during this construction period. The safety zone will be active for two hours each day, with the exact times announced via Broadcast Notices to Mariners at least 48 hours prior to enforcement. The safety zone will include all navigable waters of Oregon Inlet from approximate position 35°46'23"N., 75°32'18"W., thence southeast to 35°46'18"N., 75°32'12"W., thence southwest to 35°46'16"N., 75°32'16"W., thence northwest to 35°46'20"N., 75°32'23"W., thence northeast back to the point of origin, (NAD 1983). This zone is intended to protect persons, vessels, and the marine environment on the navigable waters in Oregon Inlet during this construction phase. No vessel or person will be permitted to enter the safety zone during the designated times.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the proposed safety zone. Vessel traffic will not be allowed to enter or transit a portion of Oregon Inlet during specific two hour periods on 33 separate days from January 29 through June 15, 2018. The specific two hour period for each work day will be broadcasted at least 48 hours in advance and vessels will be able to transit Oregon Inlet at all other times. The Coast Guard will issue a Local Notice to Mariners and transmit a Broadcast Notice to Mariners via VHF-FM marine channel 16 regarding the safety zone. This portion of Oregon Inlet has been determined to be a medium to low traffic area at this time of the year. This rule does not allow vessels to request permission to enter the safety zone covering a portion of the Oregon Inlet navigation channel during the designated times.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast

Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, which guides the Coast Guard in complying with the National Environmental

Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting for two hours on 33 separate days that would prohibit entry into a portion of Oregon Inlet for bridge construction. It is categorically excluded from further review under paragraph L60 (a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 – REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0964 to read as follows:

§ 165.T05-0964 Safety Zone; Oregon Inlet, Dare County, NC.

(a) Location. The following area is a safety zone: all navigable waters of Oregon Inlet, from approximate position 35°46'23"N., 75°32'18"W., thence southeast to 35°46'18"N., 75°32'12"W., thence southwest to 35°46'16"N., 75°32'16"W., thence northwest to 35°46'20"N., 75°32'23"W., thence northeast back to the point of origin (NAD 1983) in Dare County, NC.

(b) Definitions. As used in this section---

Captain of the Port means the Commander, Sector North Carolina.

Construction crews means persons and vessels involved in support of construction.

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

(c) Regulations. (1) The general regulations governing safety zones in §165.23 apply to the area described in paragraph (a) of this section.

(2) With the exception of construction crews, entry into or remaining in this safety zone is prohibited.

(3) All vessels within this safety zone when this section becomes effective must depart the zone immediately.

(4) The Captain of the Port, North Carolina can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina at telephone number 910--343--3882.

(5) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65 MHz) and channel 16

(156.8 MHz).

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement period. This regulation will be enforced from May 4 through June 15, 2018.

(f) Public notification. The Coast Guard will notify the public of the specific two hour closures at least 48 hours in advance by transmitting Broadcast Notice to Mariners via VHF-FM marine channel 16.

Dated: May 4, 2018

Bion B. Stewart,
Captain, U. S. Coast Guard
Captain of the Port North Carolina.
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